

**Appellate Liaison Report to the Public Defender Commission**  
**August 1, 2014**

**Appellate Attorneys' Report**

Attorneys in the appellate office have a duty to inform this Commission that the appellate caseload is at a critical mass and with the limited resources given to us, we can no longer keep up. Many of us are currently carrying caseloads in excess of the limits approved by this Commission. We have previously reported that thanks to Chief Zolynski's leadership and communication with the Montana Supreme Court, we have responded to 150% turnover in support staff, 44% turnover in attorneys, and multi-year, double-digit increases in caseloads by temporarily working overtime, carrying caseloads well in excess of national guidelines, and filing multiple motions for extension of time.

Historically, most opening briefing deadlines could be met with one or two extension requests. In the past year, we have been required to request up to 8 extensions in the 30-day deadline to file an opening brief. While we have appreciated the Court's understanding, we have not been professionally comfortable with these delays.

It has taken months before we could even begin to review the record in cases assigned to us, and then it has taken several more months before a brief could be filed. Such delays impact the substantial rights of our clients who currently wait months for our legal assistance. Recently, the Court has issued orders in some cases denying any further extensions, resulting in attorneys working overtime to address caseloads without incurring a "no further extensions" order. We are maxed out and can do no more on an individual basis.

Our Chief Appellate Defender regularly works 10 to 12 hour days, 6-7 days a week to try to address the workload. Some of us may lose accumulated leave because existing caseloads containing numerous extensions do not allow us to take time off, thereby effectively working without any compensation. Support staff is overloaded with the caseload. And still, it is never enough. We have been through difficult periods of turnover and increased caseload before, but never like this sustained tsunami of cases.

We cannot absorb the dozens of cases that are currently awaiting assignment without further delaying our clients' access to justice, nor can we absorb the continuing increase in cases that arrive daily. We must have relief in the form of additional, experienced, full-time appellate attorneys and support staff employees to address the appellate caseload. We ask for no more than what is constitutionally required, and that is an appropriately staffed appellate office with adequate resources to deal with the ever-increasing, time-sensitive, and time-intensive appellate caseload.

If relief is not forthcoming, and forthcoming soon, this Commission can expect our double-digit attorney and staff turnover to escalate. Even the most seasoned and dedicated appellate employee will not continue to work overtime without compensation or the ability to take compensatory leave; and will not continue to risk his or her professional license, health, and personal relationships to try to accomplish that which has clearly become impossible due to an ongoing lack of adequate staffing and resources in the appellate office.

### **Appellate Support Staff's Report**

The Appellate Defender Office (ADO) support staff consists of three employees who support 11 in-house attorneys and approximately 20 contract attorneys, for an overall attorney-to-staff ratio of close to 10:1. Due to a 150% turnover in support staff in recent history, our employees are relatively new. The employee with the greatest tenure, the Office Manager, has been with the office for approximately one year.

While the support staff does the best it can to learn on-the-job, we are also facing challenges with the approximate 50% increase in caseloads. Chief Zolynski is supportive and understanding, and has put a great deal of training and trust into his support staff. We are all working together to do the best we can, but there is an ever-prevalent fear of burnout due to the workload.

We are responsible for preparing and formatting all briefs submitted by contract counsel as well as our in house attorneys. The job of formatting briefs for 30+

attorneys falls primarily on the office manager and legal assistant, and this task alone can be a full time job for these employees.

Brief preparation and formatting is by no means our only responsibility. We spend a great deal of time monitoring deadlines for and preparing notices of appeal, requests for transcripts, notices of appearance, and motions for extensions of time, which have all increased exponentially. We also are responsible for monitoring court reporters' deadlines for producing transcripts, which in and of itself is a tremendously time consuming task. Additionally, we are responsible for answering the phones, a large part of which are client calls.

In order for Chief Zolynski to assign cases to attorneys, support staff must have the entire district court record scanned into our JustWare case management software. These records are voluminous, and each case may consist of several documents and exhibits containing thousands of pages. The scanning process is a never-ending task, and we are faced with having to spend hours at a time with this process on each case, which in turn monopolizes our sole copy machine. Therefore, many days when briefs or motions are due and need to be copied, we are unable to scan records.

Like the attorneys, it is common practice for support staff to work well beyond our scheduled 8-hour weekdays in order to ensure that we meet our filing deadlines in a timely manner. There simply is not enough time during the regular business day with the limited staff we have to complete the essential tasks that need to be done as part of the appellate process.

We have been willing to put in the extra hours, motivated by our belief in the mission of this office, our Chief, and the attorneys we support, however, at great cost to us. We work over forty hours a week in an environment of constant pressure. We are drowning and we respectfully request a life-line in the form of additional full-time appellate support staff at compensation levels sufficient to attract and retain experienced employees.